

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
STEVEN JAY GORDON, ) CASE NO. 09-21191 JPK  
 ) Chapter 7  
Debtor. )

ORDER CONCERNING MOTION TO DETERMINE  
VALUE OF LIEN ("MOTION")

The Motion, which was filed on January 21, 2010, seeks to "strip off" a mortgage lien held by Navy Federal Credit Union in real property located at 13040 James Drive, St. John, Indiana.

First, on January 22, 2010 the clerk's office issued an order which required the debtor's counsel to file a notice of the Motion in the form provided by N.D.Ind.L.B.R. B-2002-2. This order was erroneous: The Motion does not seek to avoid a judicial lien, but rather it seeks to "strip off" a mortgage lien, and there is no provision in the foregoing rule for using a "drop dead" notice with respect to this form of requested relief. The January 22, 2010 notice will be vacated. Because there is no provision which allows the use of a "drop dead" procedure, the notice issued by the debtor's counsel on January 23, 2010 is void.

The Motion raises a substantive legal issue upon which this court has never ruled. There is a significant split in authority as to whether or not a security interest may be "stripped off" from real property, including a principal residence, in a Chapter 7 case. The issue is further complicated in this case by the fact that the case has been previously closed, thus effecting abandonment of the subject real estate from the bankruptcy estate pursuant to 11 U.S.C. § 554(c); reopening the case will not cause this property to become re-vested in the bankruptcy estate. 11 U.S.C. § 506(a)(1) – the legal basis for any "strip off" or "strip down" proceeding with respect to a security interest [as opposed to a judicial lien subject to 11 U.S.C. § 522(f)] – specifically relates only to an "allowed claim of a creditor secured by a lien on property in which

the estate has an interest" (emphasis supplied). Putting that issue aside, the base case around which analysis of this issue revolves is *Dewsnup v. Timm*, 112 S.Ct. 773 (1992). A case which analyzes this issue in detail and allows for a "strip off" in a Chapter 7 case is *In re Yi*, 219 B.R. 394 (Bankr. E.D.Va. 1998) [which may have been implicitly overruled by a subsequent case]; a case which contains an extensive analysis which determines that "strip off" is not allowed is *In re Talbert*, 344 F.3d 555 (6<sup>th</sup> Cir. 2003).

IT IS ORDERED as follows:

1. The order entered on January 22, 2010 is vacated.
2. The notice issued by the debtor, as docketed on January 23, 2010 as record entry #24, is invalidated and shall be void for any purpose.
3. A hearing will be held on **March 8, 2010, at 1:00 P.M.** at which the debtor's counsel should be prepared to address the foregoing authorities. If the debtor decides to pursue the Motion, the court will require the submission of a legal memorandum which addresses the relief sought by the Motion.

Dated at Hammond, Indiana on February 16, 2010.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor  
Trustee, US Trustee

Navy Federal Credit Union, Attn: Highest Executive Officer, 820 Follin Lane, Vienna, VA 22180